

Application No.: 10/721,339
Reply to October 19, 2005 Office Action

Attorney Docket No. 0465-1092P
Art Unit 1746
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Amendments to the Drawings

The attached sheet of drawings includes changes to FIG. 1. This sheet, which includes FIG.1, replaces the original sheet including that same figure.

DESCRIBE CHANGE

Element 24, shown at the top left portion of FIG. 1, has been re-labeled as element 21.

Attachment: Replacement Sheet
Annotated Sheet Showing Changes

REMARKS

Applicants thank the Examiner for the very thorough consideration given the present application.

Claims 1, 4, 7, 8, 11 and 14-25 are now present in this application.

Claims 1, 8, 16, 24 and 25 are independent.

Amendments have been made to the specification, claims 2, 3, 5, 6, 9, 10, 12 and 13 have been canceled, claims 15-25 have been added, and claims 1, 4, 7, 8, 11 and 14 have been amended. No new matter is involved.

Support for the new claims and the amended claims is found throughout Applicants' original disclosure, including, for example, Fig. 3, and the description of Fig. 3 in the main body of the specification.

Reconsideration of this application, as amended, is respectfully requested.

Priority Under 35 U.S.C. § 119

Applicants thank the Examiner for acknowledging Applicants' claim for foreign priority under 35 U.S.C. §119, and receipt of the certified priority document.

Drawing Amendment

Applicants have amended FIG. 1 to eliminate the redundant use of number 24 to label two different elements in FIG. 1. The number 24 has been retained to label the damper located below tub 30. However, the detergent box located at the upper left side of FIG. 1 has been re-labeled from element 24 to element 21. A corresponding amendment has been made to paragraph [0010] of the main body of the specification to designate the detergent box as element 21. No new matter is involved.

Specification Amendments

Applicants have amended paragraph [0010] of the specification, as noted above. Applicants have also amended paragraph [0016] of the specification to correct a misspelled word and paragraph [0044] to correctly label the sump.

Rejection Under 35 U.S.C. § 102

Claims 1-7 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 3,246,491 to Buss. This rejection is respectfully traversed.

A complete discussion of the Examiner's rejection is set forth in the Office Action, and is not being repeated here.

During patent examination the U.S. Patent and Trademark Office bears the initial burden of presenting a *prima facie* case of unpatentability. *In re*

Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444(Fed. Cir. 1992); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788(Fed. Cir. 1984). This burden can be satisfied when the U.S. Patent and Trademark Office presents evidence, by means of some teaching, suggestion or inference either in the applied prior art or generally available knowledge, that would have appeared to have suggested the claimed subject matter to a person of ordinary skill in the art or would have motivated a person of ordinary skill in the art to combine the applied references in the proposed manner to arrive at the claimed invention. See Carella v. Starlight Archery Pro Line Co., 804 F.2d 135, 140, 231 USPQ 644, 647 (Fed. Cir. 1986); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); In re Rinehart, 531 F.2d 1048, 1051-1052, 189 USPQ 143, 147 (CCPA 1976).

If the U.S. Patent and Trademark Office fails to meet this burden, then the Applicants are entitled to the patent. However, when a *prima facie* case is made, the burden shifts to the Applicants to come forward with evidence and/or argument supporting patentability. Patentability *vel non* is then determined on the entirety of the record, by a preponderance of evidence and weight of argument, *Id.*

A prior art reference anticipates the subject matter of a claim when that reference discloses every feature of the claimed invention, either explicitly or

inherently. In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997) and Hazani v. Int'l Trade Comm'n, 126 F.3d 1473, 1477, 44 USPQ2d 1358, 1361 (Fed Cir. 1997). While, of course, it is possible that it is inherent in the operation of the prior art device that a particular element operates as theorized by the Examiner, inherence may not be established by probabilities or possibilities. In re Oelrich, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981) and In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993).

Claim 1, as amended, positively recites a combination of features including a sump having a center position and located at a bottom of the tub body to store water or foam, a drain outlet at a bottom of the sump located between a side of the sump and the center position of the sump wherein the water or foam is discharged via the drain outlet, and a rib at the side of the sump adjacent the drain outlet to prevent the water or foam from deviating from the sump.

This combination of features is neither disclosed nor suggested by Buss. For example, Buss' drain is located in the center of the sump.

Reconsideration and withdrawal of this rejection of claims 1-7 are respectfully requested.

Rejections under 35 U.S.C. §103

Claims 8-14 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Buss. This rejection is respectfully traversed.

A complete discussion of the Examiner's rejection is set forth in the Office Action, and is not being repeated here.

Because the rejection is based on 35 U.S.C. §103, what is in issue in such a rejection is "the invention as a whole", not just a few features of the claimed invention. Under 35 U.S.C. §103, " [a] patent may not be obtained . . . if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." The determination under section 103 is whether the claimed invention as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made. See *In re O'Farrell*, 853 F.2d 894, 902, 7 USPQ2d 1673, 1680 (Fed. Cir. 1988). In determining obviousness, the Examiner must explain what the differences between the claimed invention and the prior art are and provide objective factual evidence to support a conclusion that it would be obvious to one of ordinary skill in the art to achieve the claimed invention, which includes those missing features.

In the second place, in rejecting claims under 35 U.S.C. §103, it is

incumbent on the Examiner to establish a factual basis to support the legal conclusion of obviousness. See, In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one of ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal Inc. v. F-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the Examiner are an essential part of complying with the burden of presenting a *prima facie* case of obviousness. Note, In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783-84 (Fed. Cir. 1992). To establish *prima facie* obviousness of a claimed

invention, all the claim limitations must be suggested or taught by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1970). All words in a claim must be considered in judging the patentability of that claim against the prior art. In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

A showing of a suggestion, teaching, or motivation to combine the prior art references is an “essential evidentiary component of an obviousness holding.” C.R. Bard, Inc. v. M3 Sys. Inc., 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998). This showing must be clear and particular, and broad conclusory statements about the teaching of multiple references, standing alone, are not “evidence.” See In re Dembicza, 175 F.3d 994 at 1000, 50 USPQ2d 1614 at 1617 (Fed. Cir. 1999).

Initially, Applicants respectfully note that Buss does not disclose or suggest the combination of features recited in claim 8, for the same reasons that Buss does not disclose or suggest similar features recited in claim 1, for reasons stated above.

Moreover, the Office Action fails to provide objective factual evidence of proper motivation to modify Buss to arrive at the claimed invention, including the claimed sump drain and rib features.

Reconsideration of this rejection of claims 8-14 is respectfully requested.

New Claims 15-25

Claim 15 has been added to recite the subject matter disclosed, for example, in paragraph [0044]. Claim 15 depends from claim 8 and is allowable at least for the reason that claim 8 is allowable. Additionally, no art of record addresses this claimed feature.

Claims 16-25 positively recite combinations of features neither disclosed nor suggested by the applied art. These claims recite a combination of features including a sump having an depth that increases along a direction of rotation of the tub, a feature neither disclosed nor suggested by Buss.

In contrast to the claimed invention, Buss discloses that the depth of its sump remains the same in either direction of rotation of the tub.

Further, with respect to claim 17, Buss neither discloses nor suggests locating the drain outlet in an increased depth portion of the sump.

Accordingly, Applicants respectfully submit that claims 15-25 patentably define over the applied art.

Additional Cited References

Because the remaining references cited by the Examiner have not been utilized to reject the claims, but have merely been cited to show the state of the art, no comment need be made with respect thereto.

Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Robert J. Webster, Registration No. 46,472, at (703) 205-8076, in the Washington, D.C. area.

Prompt and favorable consideration of this Amendment is respectfully requested.

Applicants respectfully petition under the provisions of 37 C.F.R. § 1.136(a) and § 1.17 for a two-month extension of time in which to respond to the Examiner's Office Action. The Extension of Time Fee in the amount of \$450.00 is attached hereto.

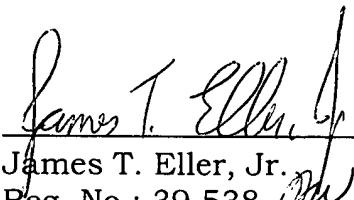
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If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

By:



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Attachments: Replacement Drawing Sheets
Annotated Drawing Sheets



FIG. 1

